THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No. 13571 of 2004

Dated:08.08.2005

Between:

1.Sri K.Balakrishna Reddy, S/o.Late Laxma Reddy,
aged about 50 years, occ:Agriculture,
R/o.Mogilgidda (Post), Shadnagar Taluk,
Mahabubnagar District, and others.

…Petitioners.

And

1.The Commissioner, Endowments Department,
Tilak Road, Hyderabad, and others.

…Respondents.

ORDER:

The petitioners seek a writ of Mandamus declaring the action of the third respondent in issuing a public notice proposing to conduct public auction for leasing out the agricultural lands in Survey Nos.22, 26, 27, 28, 32, 41, 42 and 407 of Mogiligidda Village for a period of one year. The auction was scheduled to be held on 04.08.2004. The lands proposed to be auctioned admeasuring about Acs.70.00 belong to Sri Ranganayaka Swamy Temple, Mogiligidda Village, Mahabubnagar District. The petitioners' grievance is that they are landless poor persons cultivating the temple lands, that without there being a determination under Section 82 of the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') and the A.P.Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules'), and considering their rights, respondents cannot auction temple lands.

In the counter affidavit filed by the Executive Officer of the third respondent-temple, the allegation that the petitioners are landless poor persons is denied. It is stated

that all the petitioners are employed and are not staying in Mogiligidda Village and that they are cultivating the temple lands through their sub-tenants/sub-lessees. It is also stated by the learned counsel for the third respondent that petitioners 1, 5 and 6 are cultivating agricultural dry lands admeasuring Acs.39.20 and that petitioners 2, 3 and 4 are cultivating lands admeasuring Acs.28.94 and therefore, they are not landless poor persons. It is also alleged in the counter affidavit that the petitioners are not paying the lease amount and that the third respondent is not able to arrange for regular rituals in the temple due to paucity of funds, therefore it was decided to auction the leasehold rights in respect of agricultural lands.

The learned counsel for the petitioners apart from relying on sub-section (2) of Section 82 of the Act, submit that the applications made by the petitioners are pending before the second respondent and therefore, if the auction is conducted without determining the rights of the petitioners to purchase the land, they would suffer injury and hardship. It is also submitted that after the death of the third petitioner, petitioners 7 to 10 succeeded to his estate and all of them put together do not own more than Acs.5.00 of dry land. He also brought to the notice of this Court that petitioners 8, 9 and 10 obtained certificates from the Mandal Revenue Officer concerned showing that they are landless poor persons. **Per contra,** the learned counsel for the third respondent and the learned Assistant Government Pleader for Endowments, while disputing the contentions submit that when the agricultural tenants of endowment/temple property own more than Acs.5.00 of dry land there is no necessity for the Assistant Commissioner to decide again under Rule 3 of the Rules for the purpose of Section 82(2) of the Act. They also contend that after the death of the third respondent, his legal representatives are not recognized as tenants of temple lands and as petitioner No.3 was in possession of more than Acs.5.00 of land along with petitioners 2 and 4, they are not entitled to be conferred with the benefits as landless poor persons. Reliance is placed on the decision of this Court in **Jangili Nagaiah v. Assistant Commissioner of Endowments** and also an unreported decision of a Division Bench of this Court in W.A.No.1302 of 2003, dated 05.08.2003.

The petitioners filed a detailed reply affidavit denying the counter averments. However, there is no specific denial in the reply affidavit about the avocation/calling of each of the petitioners mentioned in the counter affidavit. As per the definition of landless poor person contained in explanation to Sub-section (2) of Section 82 of the Act, a person who either as owner or as cultivating tenant or as both, does not possess more than Acs.2.50 of wet land or Acs.5.00 of dry land and whose annual income other than from such lands does not exceed Rs.3,000/- is only termed as landless poor person. The petitioners 1 and 5 are in Government employment, petitioners 2 and 3 are retired Government employees and therefore they do not come under the definition of “landless poor person”. Insofar as petitioners 4 and 6 are concerned, they are said to be tenants of more than Acs.5.00 of land and therefore, they also do not answer the definition of landless poor persons.

After coming into force of Section 82 of the Act, the lease of agricultural land belonging to a temple stands cancelled. Sub-section (2) thereof carves an exception

giving a right of presumption to a landless poor person to purchase the lands of a temple for a consideration of seventy five percent of the prevailing market value of similarly situated lands at the time of purchase. Rule 3 of the Rules confers jurisdiction on the Assistant Commissioner to enquire into and decide whether a cultivating tenant is a landless poor person as defined under Section 82 of the Act. When any cultivating tenant claims to be a landless poor person, so as to get the grievance redressed for the purpose of Section 82 of the Act, a person should be cultivating tenant and also he should be a landless poor person. A person, who does not personally cultivate the land, cannot be called a cultivating tenant. Further, as noticed above, unless a person has less than Acs.5.00 of dry land or Acs.2.50 of wet land he is not a landless poor person. If a person is in possession of more than Acs.5.00 of land, it is still incumbent on the part of the Assistant Commissioner to enquire and decide the matter. This Court in **Jangili Nagaiah**'s case (supra) considered this aspect of the matter and placing reliance on **State of A.P. v. Nallamilli Rami Reddi** held as under.

> A plain reading of the above provision discloses that persons claiming the benefit under sub-section (2) of Section 82 of the Act must fall within the category of landless poor persons as prescribed in the explanation to the section. As per the explanation **a person to be a landless poor person must not have more than two and half acres of wet land either as owner or cultivating tenant and must not have five acres of dry land either as owner or cultivating tenant.** Any person who possesses as cultivating tenant land exceeding five acres dry land cannot be treated as landless poor person. **The petitioner admittedly is a lessee of dry land admeasuring Acs.7.36 cents and, therefore, he is not a landless poor person.** Learned counsel for the petitioner raised a contention that the petitioner being a poor person is entitled to the benefit under sub-section (2) of Section 82 of the Act by allowing him to retain the leased land to an extent of Acs.5.00 and the land over and above Acs.5.00 is alone required to be surrendered. This argument suffers from fallacy. In **State of A.P. v. Nallamilli Rami Reddi (supra)**, the Supreme Court upheld the validity of Section 82 of the Act. Dealing with this aspect of the matter, it was observed as under.
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> > ……It is settled law that it is open to the legislature to state as to who should be exempt from the application of the law and, in the present case, there is a definition of "landless poor person" whose total extent of land held by him either as owner or as cultivating tenant or as both does not exceed two-and-half acres of wetland or five acres of dry land having been identified as "landless poor person" and he is enabled to purchase the land at 75% of the prevailing market value by paying in four equal installments as may be provided under the Rules. **Therefore, that aspect of saving the small landholders cannot be objected to nor can the meaning of "landless poor person" be enlarged**…….
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> > (emphasis supplied)

The other submission of the learned counsel for the petitioners is made only with reference to the claim of petitioners 7 to 10 who claim on record as legal heirs of deceased third petitioner. Even according to the learned counsel, the third petitioner was allegedly a cultivating tenant for an extent of Acs.9.00 of land. Therefore, even if

the petitioners 7 to 9 succeeded to the tenancy rights in respect of this Acs.9.00 of land, they do not become landless poor persons. The Division Bench of this Court in W.A.No.1302 of 2003, dated 05.08.2003 dealing with this aspect of the matter concluded as under.

> We are unable to accept the submission made on behalf of appellants. As a matter of fact, direction of learned single Judge is very clear that for the purpose of deciding the question as regards status of the landless poor, it is the status of the actual lessee of the land which has to be taken into account and not of any other person. The *inter se* family partition effected between the members of the family will be of no consequence. It is the relationship between the lessor and lessee, which is the *sine qua non*. Therefore, only the status of the actual lessee will be taken into consideration and the words used in sub-rule (2) of Rule 3 of the above Rules i.e., 'cultivating tenant' would confine only to actual lessee and not all persons, who might be cultivating the land by private negotiations. Thus, we do not find any merit in this appeal.

In this writ petition the third respondent proposed to conduct public auction on 04.08.2004 for the purpose of leasing out the temple lands for a period of one year. The said period of one year has expired and therefore, the third respondent has to conduct a fresh auction after giving wide publicity so that the temple will get maximum amount of rent for the leased lands.

The writ petition is devoid of merits and is accordingly dismissed with the above observations.

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(V.V.S.RAO, J)

08.08.2005

vs